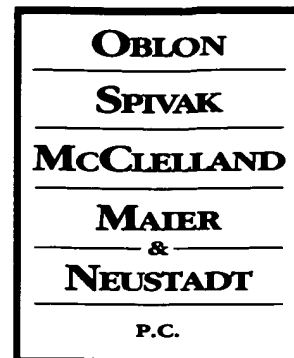




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DOCKET NO: 9438-00142 MAIL ROOM



ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

Re: U.S. Application
Serial No: 09/461,756
Filed: December 16, 1999
Group: 2815
Inventor: Hiroyuki KANO
For: LIGHT-RECEIVING DEVICE WITH
QUANTUM-WAVE INTERFERENCE LAYERS

ATTORNEYS AT LAW
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*REGISTERED PATENT AGENT

SIR:

Attached hereto for filing are the following papers:

PROVISIONAL ELECTION OF SPECIES

Our check in the amount of \$--0-- is attached covering any required fees. In the event that any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 CFR 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 CFR 1.136 for the necessary extension of time. A duplicate copy of this sheet is attached.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.

P. L. Signore 7-18-01

Gregory J. Maier
Registration No. 25,599
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Registration No. 43,922

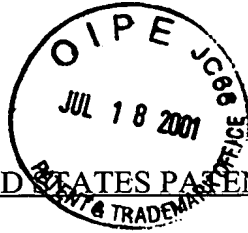


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9438-0014-2



IN THE UNITED STATES PATENT & TRADEMARK OFFICE

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JUL 20 2001

TC 2800 MAIL ROOM

#8

7-25-01

T. Flowers

IN RE APPLICATION OF:

Hiroyuki KANO

GROUP: 2815

SERIAL NO: 09/461,756

EXAMINER: BAUMEISTER, B.

FILED: December 16, 1999

FOR: LIGHT-RECEIVING DEVICE
WITH QUANTUM-WAVE
INTERFERENCE LAYERS

PROVISIONAL ELECTION OF SPECIES

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

SIR:

In response to the Election of Species Requirement dated June 21, 2001, Applicant provisionally elects with traverse **Species IA**, and lists Claims 1-4, 7, 8, 10, 11, 13-17, 18, 20 and 21 as readable thereon and Claims 1-4, 7, 8, 10, 11, 13-17 as generic.¹ Consequently, Applicant is entitled to consideration of claims to additional non-elected species, which include the limitations of an allowable generic claim, as provided by 37 C.F.R. 1.141(a).

Applicant traverses the outstanding requirement as the outstanding requirement has not established that an undue burden would be required if the requirement was not issued and if all the claims were examined together. More particularly, MPEP §803 states:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

¹See the Election of Species Requirement at page 3, identifying Claims 1-4, 7, 8, 10, 11, 13-17 as generic.

In the present application no undue burden has been established if each of the claims were examined together. In contrast, the present requirement subjects the Applicant to the added financial burden of prosecuting Claims 1-31 in separate proceedings.

Therefore, Applicant respectfully requests that the requirement to elect a single disclosed species be reconsidered and withdrawn,² and that a full examination on the merits of Claims 1-31 be conducted.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



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²See MPEP 821.01.